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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,654	02/01/2002	Carl K. Schaab	P/3763-4	4672

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EXAMINER

HO, THOMAS Y

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 05/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,654

Applicant(s)

SCHAAB, CARL K.

Examiner

Thomas Y Ho

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: A bracelet (Fig.1, 2, 5) and a tattoo (Fig.4).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 7 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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During a telephone conversation with James Finder on 5/5/03 a provisional election was made without traverse to prosecute the invention of the bracelet, claims 1-5 and 7-18.

Affirmation of this election must be made by applicant in replying to this Office action. Claim 6 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the abstract exceeds the 150 word limit. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stachowski USPN6227207 in view of Cronk USPN6244265.

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As to claim 7, Stachowski discloses:

- At least one body 33.
- A sheet material on the at least one body.

Stachowski fails to disclose or suggest:

- A fragrance-containing microcapsule material adhered to the sheet material.

Cronk discloses fragrance-containing microcapsule material 260 (Fig.7) (col.9, ln.5-16; col.12, ln.44-62) adhered to sheet material 230 (col.8, ln.41-45; col.9, ln.5-15) for easing the breathing of patients (col.1, ln.12-17; col.2, ln.40-45) and to incorporate fragrances and transdermal medications. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sheet material disclosed by Stachowski to have a fragrance-containing microcapsule material adhered to the sheet material, as taught by Cronk, to incorporate fragrances and transdermal medications into the sheet.

As to claim 1, Stachowski discloses:

- Said product is a bracelet comprising a bracelet body 33 (Fig.12).
- Said sheet material 34 covering the bracelet body.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said fragrance-containing microcapsule material adhered to the sheet material.

As to claim 2, Stachowski discloses:

- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an inside surface.

As to claim 3, Stachowski discloses:

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- Said bracelet body 33 comprises an elastic material which permits the bracelet to be slapped onto one arm by a one-handed movement of the other arm. The limitation “which...arm” holds no patentable weight because it is functional language. Refer to MPEP 2114.

As to claim 4, Stachowski discloses:

- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an inside surface (col.9, ln.5-15).

As to claim 5, Stachowski discloses:

- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an outside surface (col.12, ln.53-56).

As to claim 8, Stachowski discloses:

- Said at least one body includes a pair of bodies 110/124 connected together.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 being adhered to at least one of said bodies.

As to claim 9, Stachowski discloses:

- At least one of said bodies 110/124 includes an elastic material which urges said body automatically into a spiral shape.

As to claim 10, Stachowski discloses:

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- Each of said two bodies 110/124 includes an elastic material which urges said body automatically into a spiral shape.

As to claim 11, Stachowski discloses:

- The other end of said two bodies 110/124 includes an elastic material 128 which stretches and contracts longitudinally.

As to claim 12, Stachowski discloses:

- Providing a product comprising a body 33, with a sheet material 34 covering said body.

Cronk discloses the following limitations not disclosed by Stachowski:

- Applying a fluid 232/260 to said sheet material 230.
- Said fluid containing microcapsules 260 which contain fragrance.

As to claim 13, Stachowski discloses:

- Said product is a bracelet 33. This is intended use and holds not patentable weight.

As to claim 14, Stachowski discloses:

- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an inside surface (Fig.7).

As to claim 15, Stachowski discloses:

- Said bracelet 33 comprises an elastic material such that the bracelet can be slapped onto one arm by a one-handed movement of the other arm.

As to claim 16, Stachowski discloses:

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- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an inside surface of said bracelet adjacent to the arm of the wearer (Fig.7).

As to claim 17, Cronk discloses the following limitations not disclosed by Stachowski:

- Said fluid is applied by spraying. This holds not patentable weight because the method of applying the fluid has no relevance to the structure. It is well known within the art to apply fluids by spraying, dipping, coating, etc. as evidenced in Cronk (col.16, ln.64-67; col.17, ln.1-5).

As to claim 18, Stachowski discloses:

- A bracelet 33.

Cronk discloses the following limitations not disclosed by Stachowski:

- Said microcapsule material 260 is adhered substantially only to an outside surface (col.12, ln.54-56).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN3410023 to Anello discloses a roll spring tape novelty toy.

USPN4724548 to London discloses a hugging novelty device.

USPN4744514 to Gadoua discloses a scented lapel ornament.

USPN5176452 to Stern discloses a self-closing bag.

USPN5706800 to Cronk discloses a medicated nasal dilator.

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USPN5817385 to Stanislav discloses a scented transferable tattoo.

USPN5857217 to Hsueh discloses a light reflection band device.

USPN6116251 to Stachowski discloses a spring strip hair clip.

USPN6457585 to Huffer discloses a packaging with temporary tattoo.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-1113.

TYH
May 5, 2003



J. J. SWANN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600